87-450

Supreme Court, U.S.
FILED
AUG 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MARIE BURTENSHAW, Petitioner

v.

A. A. FERRY, Respondent

PETITION FOR WRIT OF CERTIORARY TO
THE SUPREME COURT OF THE STATE
OF PENNSYLVANIA

MARIE BURTENSHAW, pro se
ONE FORREST LANE
STRAFFORD, PENNSYLVANIA 19087

QUESTIONS PRESENTED

1) Can a person, without the knowledge and permission of a property owner, enter the property of such owner and install merchandise which was not especially ordered or contracted for? Does this person have the right to demand payment even though he had been ordered to remove the merchandise from the owner's property?

2) Can a lawyer re-open a court case which was closed because the defendant did not file an Appeal within the proper deadline? Is it unethical and inhumane for a lawyer to relentlessly pursue a minor case for three years, and submit documents (exhibits) to the court which were deliberately falsified, in order to give the impression that said documents were not filed with the court?

3) Can this lawyer order a Sheriff to sell the property of the owner on the grounds

of non-payment for merchandise which was placed on the property without the knowledge of the property owner?

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NOTE:

No Opinions were written by either the Superior Court nor the Supreme Court in Pennsylvania. No Judges' names were given. Only a notification from the Prothonotary's offices.

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MARIE BURTENSHAW, pro se
ONE FORREST LANE
STRAFFORD, PENNSYLVANIA 19087

STATEMENT BY PETITIONER
(REASON FOR GRANTING WRIT)

Petitioner is making an impassioned plea to the Honorable Judges of the Supreme Court of the United States to hear her case.

She is well aware that seemingly minor cases should not interfere with the workload of this Honorable Court. However, this case is of a nature that affects thousands or even millions of citizens who are the innocent victims of greed and crime. These people are unable to find a lawyer who will help them. So they must give up. Subsequently there are no citations of such cases on record.

Petitioner can not get herself to succumb. She is driven by a compulsion so deep that she knows that somewhere, somehow, somebody will realize that she is fighting a crime that has become too widespread.

In her own case, the contractor himself, knowing full well that he had given Petitioner

a bad deal, would have dropped the case long ago. As a matter of fact he did so in the very beginning when he did not contest Petitioner's Appeal and consequently lost the case.

It was the lawyer, Mr. Fisher, who actually started the case all over again. Through his connections with the Court House in Stroudsburg it was easy for him to have the case opened again. Even his falsified Exhibits were accepted and Petitioner's Appeal was not recorded in the court docket.

To discourage her even more, Petitioner was forced to pay threehundred dollars for the arbitration hearing in the Court House in Stroudsburg. She encountered obstacles every step of the way to make her give up. It was a nightmare and she wonders how she managed to stand up against all the intrigue and relentless harassment, all of which were instigated by the lawyer, Mr. Fisher.

All her efforts to secure a lawyer were fruitless. Nobody wanted to be bothered with a small case like this.

She finally asked for help at the Senior Citizen Center and was referred to a lawyer who worked for the Delaware County Legal Aid Association in Chester, Pennsylvania. She sent him all the relevant material; she just wanted him to help her with the correct format of this petition so it would be acceptable by the Supreme Court of the United States.

After many weeks and frantic phone calls on the part of the Petitioner, the lawyer finally called her and said that he would not help her. He said that the United States Supreme Court had no jurisdiction in this case and that it would not be considered by this court.

Apparently he had been in contact with Mr. Fisher because he actually repeated what

Mr. Fisher had previously expressed in a letter to Petitioner in which he advised her to give up her "folly" to fight him; that she was only angry at him because he had won all along; and that he had provided the money to the Sheriff necessary to start action to sell her property.

While it was impossible for Petitioner to hire an attorney because of the smallness of the claim, Mr. Fisher spent thousands of dollars on it. Why?

For almost three years now he has relentlessly pursued Petitioner with legal maneuvers, endless court appearances, briefs, and even falsified documents (Appendices F, G, H, I) to mislead the courts. He has seriously damaged her health and well-being.

He has taken advantage of the shortcomings of Petitioner's legal knowledge to trap her with legal technicalities. The real facts, the real issues, have been snowed under. The case has become a maze of legal

squabbles and threats.

Petitioner, on several occasions, has shown her desire to settle this case so that she may live in peace.

At the Magistrate's hearing in September 1984, she was willing to pay half the amount of the claim of $475 when the Justice, Clara Pope, decided that this case seemed to be a 50/50 proposition.

However, nothing came of it because, suddenly, the Justice changed her mind and awarded the whole amount to Respondent. Her new decision bears the date of the hearing, but she waited 25 days before mailing it - even though she is required, by law, to do so within five days of the hearing. More information on the District Justice is contained in Appendix K, attesting to the fact that she was arrested, some months ago, for wiring tapping, but received favorable treatment from the court.

Petitioner appealed this surprising new decision by the District Justice just under the deadline. Her Appeal was not contested by Respondent and the case was legally closed. (Appendix L)

However, before Petitioner had a chance to file for non pros, Mr. Fisher, a lawyer, came onto the scene and the Court allowed him to open the case again.

Petitioner also offered a settlement on October 17, 1985, before a scheduled hearing. Prior to this hearing she had petitioned for a trial by jury. She was convinced that people with an open mind and in the same circumstances as she is, would understand her predicament. Counsel for Respondent was well aware of that. Therefore, to avoid a verdict by jury he deliberately forestalled this. The Court never acted on the Petition and at the hearing Petitioner was simply told that the case would be heard without a jury. (Was she denied her constitutional rights?)

This would have closed the door for Petitioner to appeal to the Superior Court in Philadelphia. But an insightful Judge at the Common Pleas Court permitted her Appeal to stand. (Appendix E) It was the first and only break for Petitioner to let the law prevail.

In the following pages Petitioner will try to convince the Honorable Court that she has been taken advantage of because of her advanced age and her inability to defend herself vigorously, because she lacked the know-how of an experienced attorney who could have helped her. She was forever told that she had not acted legally.

Petitioner respectfully requests this Honorable Court that the lawyer, Mr. Fisher, and Respondent, Mr. Ferry, be put under a Peace Bond. She is afraid that harm will come to her or her property. She fears that Mr. Fisher - because of his previous

unethical methods - may find ways and means of taking her property for himself.

STATEMENT OF THE CASE

The correct and unadulterated facts of this case are as follows:

June 18, 1984

Petitioner called Respondent, Mr. Ferry, on this date and asked him if he would be interested to inspect the pump in her well on her property in Tannersville and give her an estimate for a new 1/2 horsepower Gould pump, like the one that was in her well. She also asked him to check if the pump would be repairable, and if so, to give her an estimate on the cost for that. No specific order was given in either case, let alone a contract. It was only a request for an estimate.

June 21, 1984

Mr. Ferry called and asked Petitioner to sent him the key to the cabin (Appendix M).

She did and admonished him that this was the only key she had. She was reluctant to send it but he assured her it would only take one day to get there.

June 29, 1984

When Petitioner did not hear from Mr. Ferry during the entire week, she called him on the 29th. He said: "Oh, I just received the letter today. I am going right out there and take a look at the pump."

Two hours later Mr. Ferry called back. Petitioner was surprised at this quick response and remarked on it. He said he had examined the pump and found that it was "twisted" at the end. He would be able to repair it and it would cost $276. Petitioner was amazed at this snap conclusion and said: "You did all this in two hours? Drive to my place, examine the pump, drive back to your place?" Mr. Ferry just laughed.

Petitioner was too perplexed to come to a quick decision. She told Mr. Ferry she

would talk this over with her son. Perhaps it would be safer to get a new pump. She would let him know what she had decided on.

Mr. Ferry gave Petitioner three telephone numbers where he could be reached over the weekend. After discussing this matter with her son, Petitioner decided it might be less trouble to get a new Gould pump because the one she had never gave her any trouble in ten years of service.

All weekend long (three days and evenings) she called the three numbers Mr. Ferry had given her. There was no answer on any of them. Petitioner had some misgivings.

July 2, 1984

Finally, on Monday morning, the 2nd of July, 1984, she got Mr. Ferry on the telephone. Again he expressed amusement when she told him of her efforts to reach him. Petitioner then told him that she had

decided on a new Gould pump, like the one that was inside her well, and she asked for a price for the installation. He said it would cost $495. Petitioner said that this was too high because in the meantime she had called two other contractors. One gave her an estimate of $450; the other one wanted $475. When she mentioned this to Mr. Ferry he got angry and said that, if Petitioner would give somebody else the job, she would have to pay him, Mr. Ferry, for pulling her old pump out of her well and examining it.

Tired of haggling, Petitioner told him if he would do the job for $475 (it was always understood that her inquiry was for a 1/2 horsepower, 3-wire Gould pump) he could do so. He accepted and said he would install the new pump the next day, July 3, 1984. Petitioner said she would be up there on the 4th of July and give him a check for $475.

These are the true pre-conditions of the deal.

(It was not until almost a year later when Petitioner learned that Mr. Ferry had put a pump in the well long before she had given him permission to do so. This happened on May 31, 1985 at the arbitration hearing, when his counsel submitted an "Invoice" (Appendix O), dated June 18, 1984, the very day Petitioner had called Mr. Ferry for the first time for an estimate. This invoice stated that Respondent had installed the pump on the 29th of June, 1984, before she even received an estimate. Anybody can make out an invoice and claim that he got an order for the job. But there had never been an estimate, let alone a contract, in writing or verbally.)

July 4, 1984

When Petitioner and her son arrived at the property in Tannersville, nothing

indicated any sign of work having been done. In the kitchen were some papers on how to install a Jacuzzi pump. Petitioner's old pump was gone, only the damaged part was left behind. The house was tightly locked - no sign of a break-in. Mr. Ferry had the only key to the house. He did not come to pick up his check. There was water coming out of the faucets, but not enough pressure.

Petitioner knew then that she had been swindled. Mr. Ferry obviously took advantage of her inability to drive and come up there to check on him. Therefore, as soon as he found out on the 18th of June 1984 that a pump was needed on that property, he bought, at a cheap price, an old (not used) Jacuzzi pump, which had been sitting on the dealer's shelf for 1½ years, and he dropped it into Petitioner's well. But he needed to get into the house to turn the electricity on.

So he telephoned Petitioner to send him a key for the cabin. She did and that was the last she heard from him until she got worried and called him on the 29th of June 1984 about the key. By then the Jacuzzi was snugly encased in her well, unbeknown to her. He played the charade of not having received the key until a week later. He was sure she would never find out what was in her well. (Appendix N)

Petitioner, because of her dependency on others, is an easy target for contractors of that sort. He swore under oath that he had received a firm order on the 18th of June, knowing that it would be his word against hers. But the invoice dated June 18, 1984, contains no signatures; it is a document of lies.

Shortly before the hearing on October 17, 1985, Petitioner hired a contractor to pull the pump up and examine it. Through the

serial number it was established without a doubt that the Jacuzzi pump had been 1½ years old when Mr. Ferry sank it into her well. And not only that: the capacity of the pump was only 1/3 horsepower (2-wire), instead of a 3-wire, 1/2 horsepower Gould pump. It was inadequate for full-time use.

To demonstrate how estimates should be prepared and signed, Petitioner submits two estimates (Appendices P and Q) by contractors who did work for her before. These estimates were accepted, the work done, and promptly paid for.

The three years of hassle before the courts, and the thousands of dollars spent, were needless. Counsel's motives for prolonging this case, or even starting it, are a mystery. His actions are unethical.

Petitioner therefore implores the Honorable Court to set right the wrong which has been done to her and to take

jurisdiction of this case. She believes that there must be a law that protects the Elderly from unconscionable contractors who prey on them. But she lacks the legal experience to follow up on it.

CONCLUSION

Petitioner respectfully requests that this most Honorable Court grant her Petition for Writ of Certiorari and that the Order of the Court of Appeals of the State of Pennsylvania be overruled and all other former Orders and Decisions be set aside. And to grant her such other further relief for the mental stress she had to endure, as well as the financial drain on her limited resources, due to the unnecessary court actions brought by Respondent, as to this Honorable Court appear to be appropriate.

Respectfully submitted,

Marie Burtenshaw

Marie Burtenshaw
One Forrest Lane
Strafford, Pennsylvania 19087

August 17, 1987

CERTIFICATE OF SERVICE

I, MARIE BURTENSHAW, hereby certify that on the 21st of August, 1987, I served three true and correct copies of the foregoing Petition to the counsel for Respondent, Mr. Timothy Fisher, P. O. Box 531, Mount Pocono, Pennsylvania 18344, by depositing said copies in the United States Mail, postage prepaid.

Marie Burtenshaw

MARIE BURTENSHAW
ONE FORREST LANE
STRAFFORD,
PENNSYLVANIA 19087

August 21, 1987

Sworn and subscribed before me this
4th day of Sept 19 87
June M. Troil

June M. Troil, Notary Public
Bryn Mawr, Montgomery County
My Commission Expires July 1, 1991

Appendices A, B, C, D, E, and L, M, N are attached.
All others are submitted into the custody of the Clerk of the Court.

APPENDICES

APPENDIX A

SUPREME COURT OF PENNSYLVANIA
Eastern District

June 8, 1987

Marie Burtenshaw
1 Forrest Lane
Strafford, Pa. 19087

RE: A.A. FERRY v. Marie Burtenshaw,
Petitioner
NO. 486 E.D. ALLOCATUR DOCKET 1986

Dear Ms. Burtenshaw:

This is to advise you that the following Order has been endorsed on you "Petition and Plea for Reconsideration of Decision/Verdict," filed in the above captioned matter:

"May 29, 1987.

Petition for Reconsideration denied.

Per Curiam."

Very truly yours,

(signed) Patrick Tassos

PATRICK TASSOS
Deputy Prothonotary

/pj
cc: Timothy Fisher

(Note by Petitioner:
This letter was received on June 9, 1987.
Does this affect the deadline? M.B.)

APPENDIX B

SUPREME COURT OF PENNSYLVANIA
Eastern District

February 11, 1987

Ms. Marie Burtenshaw
1 Forrest Lane
Strafford, PA 19087

Re: A. A. Ferry v. Marie Burtenshaw,
Petitioner
No. 486 E.D. Allocatur Docket 1986

Dear Ms. Burtenshaw :

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

January 8, 1987

PETITION DENIED

Per Curiam

Very truly yours,

(signed) Patrick Tassos
Deputy Prothonotary

PT:ejh
cc. Timothy Fisher, Esq.

(Note by Petitioner:
Please note that more than a month had expired before I was notified.)

APPENDIX C

IN THE SUPERIOR COURT OF PENNSYLVANIA

A. A. FERRY	:	PHILADELPHIA DISTRICT
	:	NO. 2194 Civil 1984
v.	:	C.P. Civil-Monroe NO. 3219 Philadelphia, 1985

MARIE BURTENSHAW
Appellant

ORDER OF THE COURT

AND NOW, this 30th day of April, 1986, the motion of appellee to quash the appeal is granted.

PER CURIAM

Per Curiam

APPENDIX D

IN THE COURT OF COMMON PLEAS OF THE 43rd JUDICIAL DISTRICT, COMMONWEALTH OF PENNSYLVANIA, MONROE COUNTY -- CIVIL

A.A. FERRY
Plaintiff : NO. 2194 CIVIL 1984

vs. :

MARIE BURTENSHAW : APPEAL FROM ARBITRATION
Defendant

D E C I S I O N

AND NOW, October 22, 1985 we find in favor of the Pleintiff and against the Defendant in the amount of Four Hundred Seventy-five Dollars (475.00) with interest from July 4, 1984.

BY THE COURT:

(Signed) Arlington W. Williams

Senior Judge

cc: Timothy Fisher, Esq.
Marie Burtenshaw

(Note by Petitioner:
Please note that I was denied a trial by jury. I believe that my constitutional rights were violated.)

APPENDIX E

COURT OF COMMON PLEAS OF MONROE COUNTY
43rd JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

A. A. FERRY,
Plaintiff : NO. 2194 CIVIL 1984

vs. :

MARIE BURTENSHAW :
Defendant

O R D E R

AND NOW, this 30th day of January, 1986, the above captioned case is stricken from the February 3, 1986 Argument List. The Prothonotary shall advise Plaintiff and Defendant by telephone that this case has been stricken from the argument list.

BY THE COURT:

(Signature) Ronald E. Vican

(Note by Petitioner:
The Hon. Judge Vican was the only authority to put an end to the constant harassment. The Prothonotary's Office did not telephone me. I got this order just in the nick of time by mail.)

APPENDIX L

Legal Services of Northeastern Pennsylvania, Inc.
Stroudsburg, Pennsylvania 18360

November 28, 1984

Reply to Stroudsburg

Marie Burtenshaw
1 Forrest Lane
Strafford, PA 19087

Re: Ferry vs. Burtenshaw
No. 2194 Civil 1984

Dear Mrs. Burtenshaw:

On November 15, 1984, we received your letter addressed to the Bar Association of Stroudsburg, 810 Monroe Street, Stroudsburg, Pennsylvania. On November 21, 1984, I looked your case up in the records of the Prothonotary of Monroe County, and enclosed please find a copy of the Praecipe to Enter Rule to File Complaint and your Affidavit of Service which is your appeal form. You filed your appeal October 22, 1984, and you served a copy of your Notice of Appeal on October 24, 1984. Mr. Ferry has twenty (20) days after October 24, 1984, to file a Complaint, this usually requiring him to employ an attorney. If he does not file the Complaint within twenty (20) days, you automatically win. The file still lays open on the courthouse books, but he cannot proceed against you now or at anytime in the future.

To clean this case off the county court books, you need to file a document called a Praecipe for Non Pros, although filing this document is not an absolute necessity. Because you live

(cont. next page)

in Strafford, Pennsylvania, you should contact a Legal Service office in your area. They could prepare a Preacipe of Non Pros on your behalf and file it with the Monroe County Court. If you do decide to take this course of action, please bring the enclosed copy of Notice of Appeal and Affidavit of Service with you so that they know what has happened in this case.

Your appeal was properly filed and as Mr. Ferry has not filed a Complaint, you have won. If you wish to take further steps in this matter, please contact the Legal Service Office in your area.

Very truly yours,

LEGAL SERVICES OF NORTHEASTERN PENNSYLVANIA, INC.

(signed) P. Patrick Morrissey

P. Patrick Morrissey
Attorney-at-Law

PPM:ml
Enc.

(Note by Petitioner:
There were no enclosures. And at the same day that this letter arrived, Mr. Fisher simply re-opened the case again.)

APPENDIX M

Copy of letter to Mr. A. A. Ferry

6/21/84

Dear Mr. Ferry,

Here is the key. It is for the upper lock, maybe it needs a little oil. The box is in the front bedroom. After the "rental" we took most everything out of the house. There was so much damage and theft, maybe they even did something to the pump. I hope it will not have to be replaced, it worked fine before. Somebody put the "no trespassing" sign in the bathtub, so I wrote something on the back.

I am sort of apprehensive to stay there and don't want to spend too much money on the place. Hope you can come up with a solution. And that you can fix the problem soon. I could come up to Stroudsburg by bus and if necessary stay in a hotel, and then settle with you after the work is done.

Thank you.

Marie Burtenshaw
1 Forrest Lane
Strafford, Pa. 19087

APPENDIX N

Mr. A. A. Ferry
RD 1
Box 314
Tobyhanna, Pa. 18466

July 6, 1984

Dear Mr. Ferry:

I am confused.

What kind of a pump did you put into my well? A plastic one?

And where is my old Gould pump? I made a special point of telling you that I wanted to keep this pump. You said that was perfectly all right and that it was lying outside my cabin. I still have the metal seal with the serial number printed into it and I definitely want you to put it into my cabin so it will be safe.

We were waiting for you Wednesday (July 4) because my son wanted to talk to you. I told you I had a Gould pump and called you especially to install a new one of the same kind.

You had examined the box under the house on your first visit there and stated to me that there was nothing wrong with it. Because of that I trusted you and sent you the key to my house so you could check out the pump (it was supposed to be an estimate anyway.) Now I see you have taken out the perfectly good box. That doesn't make any sense. You probably supplied me with a cheap pump while I expected a Gould pump.

Besides, the papers you left in the house are dated February 1983. Where has the pump been all the time. I never heard of a Jacuzzi pump before, there is something wrong somewhere. It is not fair to take advantage of a woman and palm something off on her that she did not order.

(cont. next page)

(APPENDIX N (cont.)

My old pump is worth a lot of money. Please let me know how you intend to straighten this out. For almost $500 I can certainly expect the very best. I have had other estimates for less. If you don't agree with me we can settle this before a Justice of the Peace. It is very sad that people always try to pull one over on senior citizens.

Please return my key at once or leave it at the Sheriff's Office. I'll be up there next week.

Very truly yours,

(Mrs.) Marie Burtenshaw
1 Forrest Lane
Strafford, Pa. 19087

Supreme Court, U.S.
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No. 87-450

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MARIE BURTENSHAW, Petitioner

v.

A. A. FERRY, Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

TIMOTHY B. FISHER, ESQ.
P. O. BOX 531, PA ROUTE 940
MT. POCONO, PENNSYLVANIA 18344

QUESTIONS PRESENTED

1) Under Rule 17 of Rules of the Supreme Court, should

Your Honorable Court grant the petition for certiorari in this case if there is no grounds for jurisdiction?

2) Under Pennsylvania procedural law, can a complaint be filed in a civil case after the twenty (20) day time limit, but prior to filing of a praecipe for a judgment non pros?

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MARIE BURTENSHAW, Petitioner

v.

A. A. FERRY, Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

TIMOTHY B. FISHER, ESQ.
P. O. BOX 531, PA ROUTE 940
MT. POCONO, PENNSYLVANIA 18344

COUNTERSTATEMENTS OF THE FACTS

This case arises out of a dispute between the Petitioner and the Plaintiff-Respondent, a contractor named A. A. Ferry, in respect to the replacement of a water pump (worn out Gould pump) with a new Jacuzzi water pump for the Defendant-Petitioner Marie Burtenshaw at her vacation residence in Tannersville, Pennsylvania, in June and July, 1984.

The Petitioner owner contends that this replacement work was not authorized by her and she further contends that all she wished was an estimate from the Respondent. The Respondent did in fact inspect the old Gould pump, found that it was shorted out, and installed a new Jacuzzi water pump; one comparable in service and quality.

This dispute was heard <u>on the merits</u> at all three trial levels of the Pennsylvania Court System, first at a Magistrate's Court

in Mt. Pocono, Pennsylvania, (on September 19, 1984), then at a hearing of arbitrators on June 3, 1985 (three lawyers under the Pennsylvania compulsory arbitration system for civil cases under $10,000.00), and finally by a judge sitting without a jury in the Court of Common Pleas of Monroe County, (Judge Arlington W. Williams on October 22, 1985).

All three tribunals found on the facts for the Respondent contractor and against the Petitioner owner.

Judge Williams in his decision of October 22, 1985, ruled in favor of the Plaintiff repairman and against the Defendant Owner in the amount of Four Hundred Seventy-Five Dollars ($475.00), plus interest.

The Defendant Appellant "appealed" the October 22, 1985 decision of Judge Williams and this appeal was squashed by the

Pennsylvania Superior Court by a per curiam decision on April 30, 1986.

Thereafter, the Petitioner Owner appealed the squashing of appeal by the Superior Court to the Supreme Court of the Commonwealth of Pennsylvania, which Court affirmed without opinion the squashing of appeal by the Pennsylvania Superior Court on January 8, 1987, and thereafter the Defendant Appellant filed a Petition for Reconsideration by the Pennsylvania Supreme Court, which Petition for Reconsideration was denied on May 29, 1987.

The only legal issue that arose in this case was a Pennsylvania procedural issue involving the filing of a complaint in a civil case after the twenty (20) day time requirement, but before the filing of a judgment non pros. In this case, the Petitioner filed on October 25, 1984, a Notice of Appeal and Rule to File a

Complaint within twenty (20) days of service of the Rule. The Respondent filed his Complaint on November 30, 1984, after the twenty (20) day period had expired, but before a judgment non pros had been praeciped or filed by the Petitioner. Judge Arlington W. Williams of the Court of Common Pleas of Monroe County ruled based on existing case law in Pennsylvania, that the Respondent had the right to file his complaint after the deadline, since no judgment non pros had been filed prior to the filing of the Complaint.

SUMMARY OF ARGUMENT

1. THERE IS NO FEDERAL QUESTION OR IMPORTANT LEGAL ISSUE TO BE DECIDED IN THIS CASE AND THEREFORE THERE IS NO JURISDICTIONAL BASIS FOR GRANTING THE PLAINTIFF'S PETITION.

2. UNDER PENNSYLVANIA PROCEDURAL LAW, IT IS PERMISSIBLE FOR A PLAINTIFF LIKE THE RESPONDENT TO FILE HIS COMPLAINT BEYOND THE TWENTY (20) DAY PERIOD ALLOWED, PROVIDED A JUDGMENT NON PROS HAS NOT BEEN FILED IN THE INTERIM.

ARGUMENT

POINT I

THERE IS NO FEDERAL QUESTION OR IMPORTANT LEGAL ISSUE OR ANY OTHER JURISDICTIONAL BASIS FOR THE PLAINTIFF-PETITIONER'S PETITION FOR WRIT OF CERTIORARI

It is a matter of sound judicial discretion of whether or not for the Supreme Court of the United States to grant the review of state court action by granting a Petition for a Writ of Certiorari. Rule 17 of the Rules of The Supreme Court of the United States, effecive June 12, 1980. Durham vs U. S. (Or. 1971) 91 S.Ct. 859, 401 U.S. 481, 28 Led 200.

There must be present in the case a federal question, some constitutional law question, or a federal statute, or a wrong policy decision that must be decided by The Supreme Court in order for The Supreme Court to grant a petition of certiorari. Donaldson vs U. S. (Fla. 1971) 91 S. Ct. 534, 400 U.S. 517, 27 Led 24;

Rice vs Sioux City Memorial Park Cemetary Iowa (1955) 75 St. Ct. 473, 614 349 U. S. 70, 99 L Ed. 897.

In this case, there are simply only fact issues, all of which were decided three (3) times by three (3) different fact finders in the Pennsylvania Court system, except for one minor procedural legal issue, which is addressed in Point II of this Brief. There is no federal questions; there is no federal statute involved in this case; there are no constitutional rights involved in this case, but only a factual dispute between the Petitioner land owner and the Respondent contractor.

There is no question that the work was done; the dispute between the parties was whether or not the work was authorized and whether it was done in compliance with what was ordered by the Petitioner owner.

Consequently, there is no jurisdictional basis to grant the Plaintiff's petition.

POINT II

UNDER RULE 1034(a) OF THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, IT IS PERMISSIBLE FOR A RESPONDENT-PLAINTIFF TO FILE A COMPLAINT LATER THAN THE TWENTY (20) DAY TIME PERIOD ALLOWED, PROVIDED THAT A JUDGMENT NON PROS HAS NOT BEEN FILED INTERIM

The only legal issue that arose in this case was a procedural issue that arose at the Court of Common Pleas level in Stroudsburg, Pennsylvania. The Petitioner-Plaintiff claimed that the Respondent-Defendant was not timely in filing his complaint after service of a Rule on him on October 24, 1984 to file a complaint within twenty (20) days. The Respondent-Defendant filed his complaint on November 30, 1984, beyond the twenty (20) day period.

Under the Pennsylvania Rules of Civil Procedure involving appeals from Magistrate's decisions by a Defendant, such as the Petitioner issued by the Prothonotary of the Court of Common Pleas as was done in this case upon the Plaintiff to file a Complaint within twenty (20) days of the service of the Rule or upon the Plaintiff. PA. R.C.P.J.P. Rule No. 1004 (B). (Page 76, 1987 Edition of Pennsylvania Rules of Court, State and Federal).

The procedure to be followed when a Plaintiff does not file the Complaint within the twenty (20) days after service upon him of the Rule, is governed by Rule 1037(a) of the Pennsylvania Rules of Civil Procedure relating to civil actions heard in the Court of Common Pleas. Malone vs Smith (1981), 18 PA D and C 3rd Reports 682, Lantzy vs Apico Inns of PA Inc. (1977) 25 Lawrence LJ 452.

RULE 1037(a) states verbatim in part as follows:

"If a complaint is not filed within twenty (20) days of the service of the Rule, the Prothonotary, upon Praecipe of the Defendant shall enter a judgment non pros".

(Page 344, 1987 Edition of Pennsylvania Rules of Court, State and Federal) .

The Pennsylvania Courts have interpreted that second sentence of Rule 1037(a) to mean the judgment non pros is not automatic at the time of the twenty (20) day period to file a Complaint. There must be some action by the Defendant, and that action is filing a Praecipe or other legal papers to request a judgment non pros. Homemakers Loan and Discount Company vs Rowe (1977) 4 PA D and C Reports 3rd 167.

The right to a judgment non pros is lost to the Defendant, if the Plaintiff files a late Complaint prior to the Defendant filing his or her Praecipe for

Judgment non pros. Malone vs Smith (1981) 18 PA D & C 3rd Reports 682; Lantzy vs Apico Inns of Pa, Inc. (1977) 25 Lawrence LJ 452.

CONCLUSION

The Respondent A. A. Ferry respectfully requests Your Honorable Court to dismiss or deny the Petition of the Petitioner Marie Burtenshaw for a Writ of Certiorari in the above captioned matter for the reasons heretofore set forth in this Brief.

Respectfully submitted,

Timothy B. Fisher, Esquire
Attorney for Respondent A. A. Ferry
P. O. Box 531, PA Route 940
Mt. Pocono, Pennsylvania 18344

October 6, 1987

LIST OF AUTHORITIES OR CITATIONS

1. Donaldson vs U. S. (Fla, 1971) 910 S.Ct. 534, 400 US. 517, 27 LEd.

2. Durham vs U. S. (Or. 1971) 91 S. Ct. 809, 401 U.S. 481, 280 Led 200.

3. Homemakers Loan and Discount Company vs Rowe (1977) 4 PA D and C Reports 3rd 167.

4. Lantzy vs Apico Ins. of Pa., Inc. (1977) 25 Lawrence LJ 452.

5. PA R.C. P. J. P. Rule No. 1004 (B) (Page 76), 1987 Edition of Pennsylvania Rules of Court, State and Federal.

6. Rule 1037 (a) of PA Rules of Civil Procedure, Page 344, 1987 Edition of Pennsylvania Rules of Court State and Federal.

7. Rule 17 of Rules of U. S. Supreme Court, effective June 12, 1980.

8. Malone vs Smith (1981) 18 PA D & C 3rd Reports 682.

9. Rice vs Sioux City Memorial Park Cemetary Iowa(1955) 75 St. Ct. 473, 614 349 U.S. 70, 99 L Ed. 897.

CERTIFICATE OF SERVICE

I, TIMOTHY B. FISHER, ESQUIRE, hereby certify that on the 6th day of October, 1987, I served three (3) true and correct copies of the foregoing Brief of Respondent to Marie Burtenshaw, One Forrest Lane, Strafford, Pennsylvania 19087, by depositing said copies in the United States Mail, postage prepaid.

TIMOTHY B. FISHER, ESQUIRE
P. O. Box 531, PA Route 940
Mt. Pocono,
Pennsylvania 18344

October 6, 1987

Sworn and subscribed before me
this 6th day of October, 1987.

NOTARIAL SEAL
AGNES MARY FISHER, NOTARY PUBLIC
LEHIGH TOWNSHIP, MONROE COUNTY
MY COMMISSION EXPIRES SEPT. 13, 1990
Member, Pennsylvania Association of Notaries

Appendices A, B, C, D, and E are attached.

APPENDICES

APPENDIX A

SUPREME COURT OF PENNSYLVANIA
Eastern District

June 8, 1987

Marie Burtenshaw
1 Forrest Lane
Strafford, Pa. 19087

RE: A. A. FERRY v. Marie Burtenshaw
Petitioner
NO: 486 E.D. ALLOCATUR DOCKET 1986

Dear Ms. Burtenshaw:

This is to advise you that the following Order has been endorsed on your "Petition and Plea for Reconsideration of Decision/Verdict," filed in the above captioned matter:

"May 29, 1987.

Petition for Reconsideration denied.

Per Curiam."

Very truly yours,

(signed) Patrick Tassos

PATRICK TASSOS
Deputy Prothonotary

/pj
cc: Timothy B. Fisher

APPENDIX B

SUPREME COURT OF PENNSYLVANIA
Eastern District

February 11, 1987

Ms. Marie Burtenshaw
1 Forrest Lane
Strafford, PA 19087

Re: A. A. Ferry v. Marie Burtenshaw,
Petitioner
No. 486 E. D. Allocatur Docket 1986

Dear Ms. Burtenshaw:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

January 8, 1987

PETITION DENIED

Per Curiam

Very truly yours,

(signed) Patrick Tassos
Deputy Prothonotary

PT:ejh
cc. Timothy Fisher, Esq.

APPENDIX C

IN THE SUPERIOR COURT OF PENNSYLVANIA

A. A. FERRY	:	PHILADELPHIA DISTRICT
	:	NO. 2194 Civil 1984
v.	:	C.P. Civil-Monroe NO. 3219 Philadelphia, 1985

MARIE BURTENSHAW
Appellant

ORDER OF THE COURT

AND NOW, this 30th day of April, 1986, the motion of appellee to quash the appeal is granted.

PER CURIAM

Per Curiam

APPENDIX D

IN THE COURT OF COMMON PLEAS OF THE 43rd JUDICIAL DISTRICT, COMMONWEALTH OF PENNSYLVANIA, MONROE COUNTY -- CIVIL

A. A. FERRY Plaintiff	:	NO. 2194 CIVIL 1984
vs	:	
MARIE BURTENSHAW Defendant	:	APPEAL FROM ARBITRATION

D E C I S I O N

AND NOW, October 22, 1985 we find in favor of the Plaintiff and against the Defendant in the amount of Four Hundred Seventy-five Dollars ($475.00) with interest from July 4, 1984.

BY THE COURT:

(signed) Arlington W. Williams

Senior Judge

cc: Timothy Fisher, Esq.
Marie Burtenshaw

APPENDIX E

IN THE COURT OF COMMON PLEAS OF THE 43rd JUDICIAL DISTRICT OF PENNSYLVANIA
MONROE COUNTY BRANCH

A. A. FERRY	:	No. 2194 Civil 1984
	:	
vs.	:	Notice of Award
	:	
MARIE BURTENSHAW	:	

To Timothy B. Fisher, Esq., Attorney for Plaintiff Please note that the arbitrators in the above entitled case have filed their award in this office on May 31, 1985, and have Awarded and found for the Plaintiff in the sum of $475.00 + costs + interest from July 4, 1984.

Joyce A. Reese
Prothonotary

By: (signed) Marsha Wasserman
Deputy

June 3, 1985

Supreme Court, U.S.
FILED
OCT 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-450

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MARIE BURTENSHAW, Petitioner

v.

A. A. FERRY, Respondent

BRIEF BY PETITIONER IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS/DENY HER PETITION FOR WRIT OF CERTIORARY TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

MARIE BURTENSHAW, pro se
ONE FORREST LANE
STRAFFORD, PENNSYLVANIA 19087

QUESTIONS PRESENTED

1) Does a citizen of the United States have a constitutional right to demand a trial by jury? Can a judge of a lower court simply declare: no, there will not be a jury, despite a written petition and a verbal request by a petitioner?

2) Can the Supreme Court of a State deny a petition without giving a written opinion or state the reason why it is denied? Is Petitioner entitled to be informed of the names (and signatures) of the judges who read her petition, and why they decided against it?

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(Copy of docket,
Prothonotary's Office of
Monroe County Court House,
Stroudsburg, Pennsylvania,
is in the custody of the
Clerk of Court of the Supreme
Court of the United States,
Washington, D.C.)

OPINION

In his Motion to Dismiss counsel for Respondent uses the law as a vehicle to disqualify Petitioner. He is trying to convince that your Honorable Court has no jurisdiction in this case. But that is not so.

Petitioner again and again was denied her constitutional right for a fair trial. She is invoking the Fifth and Fourteenth Amendments. Scare tactics and threats have been employed trying to bring her to her knees. This case is of imperative public importance and justifies the attention of the highest court in the country. Millions of older people are affected who are deprived of their constitutional rights because they have no access to the law because of their limited resources. They are too handicapped to fight back when they

are swindled because nobody takes them serious anymore.

Petitioner's situation is a clear example of this fact. It is a clear case of disrespect for the law and violation of a citizen's constitutional right to be treated equally and with justice.

If Mr. Fisher had a clear-cut case on his hands and a clear conscience, why did he stoop to falsify documents?

He started out with filing a complaint after the deadline had expired.

He followed up with notarizing a document with his notary seal which had expired two years earlier.

He went on further by altering exhibits (now in the custody of the Clerk of Court) to cover up his activities. He conducted a case of vengeance for no other reason than to harass an elderly woman.

How can a man like that be trusted?

It is clear that he has engaged in conduct unbecoming any human being, but especially any member of the Bar of your Honorable Court, or any other Bar as well.

STATEMENT BY PETITIONER

The counterstatements made by counsel for Respondent are not only negligible, they are also false. Petitioner has avoided up to now to embellish on the court hearings. But for her own protection she must now do so.

Arbitration Hearing

This hearing was held on May 31, 1985, not on June 3, 1985, as described by counsel. It was not conducted as one would expect in a court of law. It was a free-for-all, a circus. There were two very young men, obviously obliged to go along with the chairman who is a friend of Mr. Fisher's. Respondent, (then plaintiff) alternately shook with hysterical laughter and incoherent stupor. His lawyer lounged nonchalently on a chair in the middle of the room, certain of victory. After an hour of arguing back and forth the chairman declared in favor of Mr. Fisher. There was

furor when Petitioner (then defendant) declared she would appeal the verdict. The chairman angrily demanded $300 (threehundred dollars) for one hour of what should have been an arbitration hearing.

These are the real and true happenings.

HEARING BEFORE JUDGE WILLIAMS

The hearing was in October 1985. Petitioner was on the road since 6 a.m. from her home in Strafford. Arriving at the Court House at 9 a.m., she found Judge Williams and lawyer Fisher in conference. She was told the hearing was postponed til 2 p.m., and there would be no jury trial. Petitioner had to spend four hours out in the street. Please note: she is in her seventies and was tired out from her ordeal.

Dejectedly, at 2 p.m. on this day of October 17th, 1985, she made another plea for settlement. It was refused. She was placed, in the empty court room, behind the back of

Mr. Fisher. He spoke in a low whisper. She could not see his face. When she complained, the Judge threatened her with contempt of Court. Throughout she was treated with contempt and hostility. When she finally was permitted to tell what really happened to her, she did so with accuracy. She felt that she made an impression, that she was believable. But the lawyer kept the upper hand .

The result is known. However, Judge Williams' decision only called for payment of $475 plus interest. No costs. Mr. Fisher arranged this later by having the Prothonotary sign a document he himself had prepared - not the court. There are undercurrents.

At this point, Respondent himself has no stake in this case anymore. It is clear that he would not pay for three years of litigation at one hundred dollars an hour. He knows that he swindled Petitioner and entered her property without her knowledge. He was found out. He should have removed the

merchandise when he was told. He was obstinate.

The deceit began with District Judge Clara Pope (who lately was indicted for a crime) by improperly withholding her verdict from Petitioner in the hope that an appeal would be too late. Then Mr. Fisher heard about this case through the Legal Aid Society. In order to prevent Petitioner from filing for non pros, he rushed his complaint to the Court. Because of his connections with the courthouse personnel his complaint was accepted. And so began 3 years of unbelievable harassment for Petitioner.

It is clear that Petitioner's constitutional rights have been violated. Counsel did not provide your Honorable Court with the decision of Judge Vican who was aware of it. Petitioner hopes that Supreme Court of the United States will finally give her the satisfaction of being treated as a first class citizen such as she has been all her life.

CONCLUSION

In view of the foregoing, Petitioner respectfully reiterates her Appeal to your Honorable Court to grant her redress for the years of anxiety and harassment she was subjected to.

Respectfully submitted,

Marie Burtenshaw

Marie Burtenshaw
One Forrest Lane
Strafford, Pennsylvania 19087

October 21, 1987

CERTIFICATE OF SERVICE

I, MARIE BURTENSHAW, hereby certify that on October 21, 1987, I served three true and correct copies of the foregoing Brief in Opposition to Respondent's demand for dismissal of her Petition for Writ of Certiorary, to Timothy Fisher, Lawyer, P.O. Box 531, Mt. Pocono, Pennsylvania 18344 by depositing these copies in the United States Mail, postage prepaid.

October 21, 1987

Marie Burtenshaw
One Forrest Lane
Strafford,
Pennsylvania 19087

Sworn to and subscribed before me this 21st day of October, 1987

BARTON W. BALLENGER, Notary Public
Lower Merion Twp., Montg. County, Pa.
My Commission Expires June 21, 1991

BEST AVAILABLE COPY

APPENDIX A

(Copy of docket, Prothonotary's Office of Monroe County court house, Stroudsburg, Pennsylvania, is in the custody of the Clerk of Court at the Supreme Court of the United States in Washington, D.C.)